

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

**Citibank, N.A., as Trustee, in trust for
registered Holders of WaMu Asset-Backed
Certificates WaMu Series 2007-HE2 Trust**

Plaintiff

vs.

**Daniel A. Misner and Janis G. Misner
A/K/A Janice G. Misner**

Defendants

Gregory Roy

Party-In-Interest

CIVIL ACTION NO:

COMPLAINT

RE:

627 Waterville Road, Skowhegan, ME 04976

Mortgage:

January 26, 2007

Book 3806, Page 109

Somerset County Registry of Deeds

NOW COMES the Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, by and through its attorneys, Doonan, Graves & Longoria, LLC, and hereby complains against the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant 28 U.S.C. § 1332(a)(1) (Diversity) because the Plaintiff and Defendants are citizens of different states and the matter in controversy exceeds the sum or value of seventy-five thousand and 00/100 (\$75,000.00) dollars, exclusive of interest and costs. Any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought under 28 U.S.C. § 2201.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the object of this litigation is a Note executed under seal currently owned and held by Citibank,

N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, in which the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, are the obligor and the total amount owed under the terms of the Note is Two Hundred Twenty-Three Thousand Two Hundred Forty-Two and 53/100 (\$223,242.53) Dollars, plus attorney fees and costs associated with the instant action; thus, the amount in controversy exceeds the jurisdictional threshold of seventy-five thousand (\$75,000.00) dollars.

3. Venue is properly exercised pursuant to 28 U.S.C. §1391(b)(2) insofar as all or a substantial portion of the events that give rise to the Plaintiff's claims transpired in Maine and the property is located in Maine.

PARTIES

4. Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust is a National Association with its main/principal place of business located at 5800 S Corporate Place, Sioux Falls, SD 57108.
5. The Defendant, Janis G. Misner A/K/A Janice G. Misner, is a resident of Skowhegan, County of Somerset and State of Maine.
6. The Defendant, Daniel A. Misner, is a resident of Skowhegan, County of Somerset and State of Maine.
7. The Party-in-Interest, Gregory Roy, is located at 390 Costello Road, Gardiner, ME 04345.

FACTS

8. On October 13, 2000, by virtue of a Warranty Deed from Peter D. Webb and Gloria A. Webb, which is recorded in the Somerset County Registry of Deeds in **Book 2728, Page 188**, the property situated at 627 Waterville Road, City/Town of Skowhegan, County of Somerset, and State of Maine, was conveyed to Daniel A. Misner and Janis G. Misner, being more particularly described by the attached legal description. *See* Exhibit A (a true and correct copy of the legal description is attached hereto and incorporated herein).
9. On January 26, 2007, Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, executed and delivered to Washington Mutual Bank a certain Note under seal in the amount of \$226,400.00. *See* Exhibit B (a true and correct copy of the Note is attached hereto and incorporated herein).
10. To secure said Note, on January 26, 2007, Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, executed a Mortgage Deed in favor of Washington Mutual Bank, securing the property located at 627 Waterville Road, Skowhegan, ME 04976 which Mortgage Deed is recorded in the Somerset County Registry of Deeds in **Book 3806, Page 109**. *See* Exhibit C (a true and correct copy of the Mortgage is attached hereto and incorporated herein).
11. On February 27, 2009, the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, executed a Loan Modification Agreement which adjusted the principal amount of the Note to \$230,876.51 (herein after referred to as the “Loan Modification”), which acknowledged the enforceability of both the Note and Mortgage as of that date by that holder. That enforceability remains effective as of today's date by the Plaintiff and provides the Plaintiff with standing in this foreclosure and sale action. *See* Exhibit D (a true and correct copy of the Loan Modification is attached hereto and incorporated herein)

12. On July 25, 2011, the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, executed a Loan Modification Agreement which adjusted the principal amount of the Note to \$240,002.93 (herein after referred to as the “Loan Modification”), which acknowledged the enforceability of both the Note and Mortgage as of that date by that holder. That enforceability remains effective as of today's date by the Plaintiff and provides the Plaintiff with standing in this foreclosure and sale action. *See* Exhibit E (a true and correct copy of the Loan Modification is attached hereto and incorporated herein)
13. The Mortgage was then assigned to Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust by virtue of an Assignment of Mortgage dated January 17, 2013, and recorded in the Somerset County Registry of Deeds in **Book 4624, Page 132**. *See* Exhibit F (a true and correct copy of the Assignment of Mortgage is attached hereto and incorporated herein).
14. On March 11, 2014, the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, executed a Loan Modification Agreement which adjusted the principal amount of the Note to \$208,936.24 (herein after referred to as the “Loan Modification”), which acknowledged the enforceability of both the Note and Mortgage as of that date by that holder. That enforceability remains effective as of today's date by the Plaintiff and provides the Plaintiff with standing in this foreclosure and sale action. *See* Exhibit G (a true and correct copy of the Loan Modification is attached hereto and incorporated herein)
15. On June 1, 2024, the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, were sent a Notice of Mortgagor's Right to Cure, as evidenced by the United States Post Office Records Mail Tracking Numbers (herein after referred to as the “Demand Letter”). *See* Exhibit H (a true and correct copy of the Demand Letter is attached hereto and incorporated herein).

16. The Demand Letter informed the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, of the payment due date, the total amount necessary to cure the default, and the deadline by which the default must be cured, which was thirty-five (35) days from receipt of the Demand Letter. *See* Exhibit H.
17. The Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, failed to cure the default prior to the expiration of the Demand Letter.
18. The Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, is the present holder of the Note pursuant to endorsement by the previous holder (if applicable), payment of value and physical possession of the Note in conformity with 11 M.R.S. § 3-1201, et seq., and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929).
19. The Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, hereby certifies it is the lawful holder and owner of the Note and Mortgage.
20. The Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, hereby certifies that all steps mandated by law to provide notice to the mortgagor pursuant to 14 M.R.S.A. § 6111 and/or Note and Mortgage were strictly performed.
21. Gregory Roy is a Party-in-Interest pursuant to a Writ of Execution in the amount of \$33,522.79 dated March 23, 2016, and recorded in the Somerset County Registry of Deeds in **Book 5205, Page 163**, however, upon information and believe failed to provide the debtor with the required notice under Maine law and therefore his lien is void and therefore may be in second position behind Plaintiff's Mortgage.

22. The total debt owed under the Note and Mortgage as of November 16, 2024, is Two Hundred Twenty-Three Thousand Two Hundred Forty-Two and 53/100 (\$223,242.53) Dollars, which includes:

Description	Amount
Principal Balance	\$217,596.37
Interest	\$4,151.32
Late Charges Outstanding	\$347.93
Loan Level Advance Balance	\$1,140.00
Interest on Advances	\$6.91
Grand Total	\$223,242.53

23. Upon information and belief, the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, are presently in possession of the subject property originally secured by the Mortgage.

24. The Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner declared bankruptcy in 2017 (Docket 17-10512) and although they received a bankruptcy discharge, they had already reaffirmed the debt, and said reaffirmation was filed with the Bankruptcy Court and therefore, upon information and belief, they are both still personally liable on this debt. *See, Exhibit I* (true and correct copies of the filed Reaffirmation Agreement and Notice to the Court of the Filing of Reaffirmation Agreement (Docket 17-10512 ECF's 48 and 51) are attached hereto and incorporated herein).

COUNT I – FORECLOSURE AND SALE

25. The Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, repeats and re-alleges paragraphs 1 through 24 as if fully set forth herein.

26. This is an action for foreclosure and sale respecting a real estate related Mortgage and title located at 627 Waterville Road, Skowhegan, County of Somerset, and State of Maine. *See* Exhibit A.
27. The Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, is the holder of the Note referenced in Paragraph 9 pursuant to endorsement by the previous holder (if applicable) and physical possession of the aforesaid Note in conformity with Title 11, section 3-1201, et seq. of the Maine Revised Statutes and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929). As such, Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, has the right to foreclosure and sale upon the subject property.
28. The Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, hereby certifies it is the current owner and investor of the aforesaid Mortgage and Note.
29. The Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, are presently in default on said Mortgage and Note, having failed to make the monthly payment due March 1, 2024, and all subsequent payments, and, therefore, have breached the condition of the aforesaid Mortgage and Note.
30. The total debt owed under the Note and Mortgage as of November 16, 2024 is Two Hundred Twenty-Three Thousand Two Hundred Forty-Two and 53/100 (\$223,242.53) Dollars.
31. The record established through the Somerset County Registry of Deeds indicates that there are no public utility easements recorded subsequent to the Mortgage and prior to the commencement of these proceedings affecting the mortgaged premises at issue herein.

32. By virtue of the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner's, breach of condition, the Plaintiff hereby demands a foreclosure and sale on said real estate.
33. Notice in conformity with 14 M.R.S.A. § 6111 and/or Note and Mortgage was sent to the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, on June 1, 2024, evidenced by the United States Post Office Records. *See* Exhibit H.
34. The Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, are not in the Military as evidenced by the attached Exhibit J.

COUNT II – BREACH OF NOTE

35. The Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, repeats and re-alleges paragraphs 1 through 34 as if fully set forth herein.
36. On January 26, 2007, the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, executed under seal and delivered to Washington Mutual Bank a certain Note in the amount of \$226,400.00. *See* Exhibit B.
37. The Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, are in default for failure to properly tender the March 1, 2024, payment and all subsequent payments. *See* Exhibit H.
38. The Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, is the proper holder of the Note and is entitled to enforce the terms and conditions of the Note due to its breach by the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner.
39. The Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, having failed to comply with the terms of the Note and Mortgage, are in breach of both the Note and the Mortgage.

40. The Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner's, breach is knowing, willful, and continuing.
41. The Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner's, breach has caused Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, to suffer actual damages, including, but not limited to money lent, interest, expectancy damages, as well as attorney's fees and costs.
42. The total debt owed under the Note and Mortgage as of November 16, 2024, if no payments are made, is Two Hundred Twenty-Three Thousand Two Hundred Forty-Two and 53/100 (\$223,242.53) Dollars.
43. Injustice can only be avoided by awarding damages for the total amount owed under the Note including interest, plus costs and expenses, including attorney fees.

COUNT III – BREACH OF CONTRACT, MONEY HAD AND RECEIVED

44. The Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, repeats and re-alleges paragraphs 1 through 43 as if fully set forth herein.
45. By executing, under seal, and delivering the Note, the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, entered into a written contract with Washington Mutual Bank who agreed to loan the amount of \$226,400.00 to the Defendants. *See* Exhibit B.
46. As part of this contract and transaction, the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, executed the Mortgage to secure the Note and the subject property. *See* Exhibit C.
47. The Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, is the proper holder of the Note and

successor-in-interest to Washington Mutual Bank and has performed its obligations under the Note and Mortgage.

48. The Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, breached the terms of the Note and Mortgage by failing to properly tender the March 1, 2024, payment and all subsequent payments. *See* Exhibit H.
49. The Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, is the proper holder of the Note, and is entitled to enforce the terms and conditions of the Note due to its breach by the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner.
50. The Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, having failed to comply with the terms of the Note and Mortgage, are in breach of contract.
51. The Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, are indebted to Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust in the sum of Two Hundred Twenty-Three Thousand Two Hundred Forty-Two and 53/100 (\$223,242.53) Dollars, for money lent by the Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, to the Defendants.
52. Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner's, breach is knowing, willful, and continuing.
53. Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner's, breach has caused Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, to suffer actual damages, including, but not limited to money lent, interest, expectancy damages, as well as attorney's fees and costs.

54. The total debt owed under the Note and Mortgage as of November 16, 2024, if no payments are made, is Two Hundred Twenty-Three Thousand Two Hundred Forty-Two and 53/100 (\$223,242.53) Dollars.
55. Injustice can only be avoided by awarding damages for the total amount owed under the Note and Mortgage, and for money had and received, including interest, plus costs and expenses, including attorney fees.

COUNT IV –UNJUST ENRICHMENT

56. The Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, repeats and re-alleges paragraphs 1 through 55 as if fully set forth herein.
57. Washington Mutual Bank, predecessor-in-interest to Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, loaned the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, \$226,400.00. *See* Exhibit B.
58. The Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, have failed to repay the loan obligation.
59. As a result, the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, have been unjustly enriched to the detriment of the Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust as successor-in-interest to Washington Mutual Bank by having received the aforesaid benefits and money and not repaying said benefits and money.
60. As such, the Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, is entitled to relief.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, prays this Honorable Court:

- a) Issue a judgment of foreclosure and sale in conformity with Title 14 § 6322;
- b) Determine the amount due and priority of any valid liens held by any Party-In-Interest who appears in this action;
- c) Grant possession to the Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, upon the expiration of the period of redemption;
- d) Find that the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, are in breach of the Note by failing to make payment due as of March 1, 2024, and all subsequent payments;
- e) Find that the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, are in breach of the Mortgage by failing to make payment due as of March 1, 2024, and all subsequent payments;
- f) Find that the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, entered into a contract for a sum certain in exchange for a security interest in the subject property;
- g) Find that the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, are in breach of contract by failing to comply with the terms and conditions of the Note and Mortgage by failing to make the payment due March 1, 2024, and all subsequent payments;

- h) Find that the Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, is entitled to enforce the terms and conditions of the Note and Mortgage;
- i) Find that by virtue of the money retained by the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner have been unjustly enriched at the Plaintiff's expense;
- j) Find that such unjust enrichment entitles the Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, to restitution;
- k) Find that the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, are liable to the Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, for money had and received;
- l) Find that the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, have appreciated and retained the benefit of the Mortgage and the subject property;
- m) Find that it would be inequitable for the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, to continue to appreciate and retain the benefit of the Mortgage, Note and subject property without recompensing the appropriate value;
- n) Find that the Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, is entitled to restitution for this benefit from the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner;
- o) Determine the amount due on said Mortgage and Note, including principal, interest, reasonable attorney's fees and court costs;

- p) Additionally, issue a money judgment against the Defendants, Daniel A. Misner and Janis G. Misner A/K/A Janice G. Misner, and in favor of the Plaintiff, Citibank, N.A., as Trustee, in trust for registered Holders of WaMu Asset-Backed Certificates WaMu Series 2007-HE2 Trust, in the amount of Two Hundred Twenty-Three Thousand Two Hundred Forty-Two and 53/100 (\$223,242.53) Dollars, the total debt owed under the Note plus interest and costs including attorney's fees and costs;
- q) For such other and further relief as this Honorable Court deems just and equitable.

Respectfully Submitted,
Citibank, N.A., as Trustee, in trust for
registered Holders of WaMu Asset-Backed
Certificates WaMu Series 2007-HE2 Trust,
By its attorneys,

Dated: December 20, 2024

/s/Reneau J. Longoria, Esq.
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